

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T-MOBILE USA, INC., a Delaware
corporation,

Plaintiff,

v.

HUAWEI DEVICE USA, INC., a Texas
corporation; and HUAWEI TECHNOLOGIES
CO. LTD, a China corporation,

Defendants

Case No. C14-1351-RAJ

**T-MOBILE USA, INC.'S
OPPOSITION TO HUAWEI
DEVICE USA'S MOTION TO
DISMISS**

**NOTE ON MOTION CALENDAR:
NOVEMBER 21, 2014**

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Huawei infiltrated T-Mobile's labs without authorization, stole its robot testing technology, and used that stolen information to build and improve its own robot. T-Mobile's complaint describes this scheme in detail, as well as the value of T-Mobile's proprietary testing robot technology, the effort and investment to develop it, the steps to keep it secret, and the harm caused by Huawei's actions. The complaint states a claim for misappropriation of trade secrets.

Huawei's motion ignores these allegations. Huawei attempts to reduce its wrongdoing to "merely" taking a handful of photographs (an act that itself explicitly violates the parties' contracts). But as the complaint describes – and as Huawei has already admitted – Huawei stole far more. Indeed, Huawei smuggled robot parts out of the T-Mobile facility while trying to hide from a security camera, lied to T-Mobile personnel about having authorization to escort Huawei employees into the lab to take measurements and photographs of the robot, and made conference calls to Huawei R&D in China to "address questions" about the stolen information. Knowing it cannot deny the theft, Huawei tries to minimize the value of the stolen technology behind the robot, suggesting that all of it is public. Yet Huawei's actions defy its arguments. Why expend effort to steal what it can learn from a public filing, or a web video? The answer is that Huawei could not develop and improve its robot with public materials. It needed T-Mobile's innovative and confidential technology.

The first seventeen pages of Huawei's motion urge the Court to rely on outside materials and bare assertions of fact to overcome T-Mobile's well-pleaded trade secret allegations. This is not a motion for summary judgment. Even if it were, Huawei's repeated misstatements of fact do not support dismissal. Nowhere does T-Mobile plead – nor does anything submitted by Huawei establish – that Epson created the testing robot (it did not), that T-Mobile freely gave robot parts to Huawei to study and copy (it did not), or that all of the information that Huawei stole is public (it is not). The jury will no doubt find Huawei's unsupported factual assertions incredible, but the Court need not address these matters now.

Aside from being wrong on the facts, Huawei's motion has misstated the law. *First*,

1 "whether specific information is a trade secret," including whether it satisfies the "secrecy"
2 element, is a question of fact to be addressed at trial. *See, e.g., Ed Nowogroski Ins., Inc. v.*
3 *Rucker*, 137 Wash. 2d 427, 436 (1999). *Second*, the mere existence of patents and patent
4 applications relating to *some* of the robot testing technology does not forfeit protection for the
5 many elements that remain secret and valuable – not to mention the refinements made to the
6 robot in the years since the patent applications were published. Trade secrets exist, for example,
7 in the lab robot's component selection and specifications, (Compl. ¶¶ 13, 15, 43, 57, 71, 80), in
8 its operating software, (*Id.* ¶¶ 13, 33, 39, 61, 80), in know-how relating to its operation, (*Id.*
9 ¶¶ 69, 80), and in the unique combinations of public and non-public materials (*Id.* ¶ 80). Indeed,
10 Huawei's argument that any patent covers "all aspects of the robot," (Mot. at 7), is belied by the
11 fact that *three* separate applications over time cover different *aspects* of robot testing technology.
12 For a motion to dismiss, the factual question – whether each trade secret Huawei stole is
13 disclosed – is governed by T-Mobile's allegations in the complaint, not Huawei's unsupported
14 assertions in its motion. (*See, e.g.,* Mot. at 1) (claiming that "[t]he T-Mobile robot . . . was
15 actually in the public domain years before Huawei even had access to T-Mobile's lab and the
16 robot."). *Third*, the purpose of a motion to dismiss is to determine whether the plaintiff has
17 sufficiently and fairly stated a plausible claim in order to "unlock the doors of discovery."
18 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Having pleaded detailed allegations about Huawei's
19 scheme – identifying specific trade secrets stolen, and particular acts of theft – without the
20 benefit of discovery and without disclosing materials provided by Huawei pursuant to an NDA
21 before this case was filed, T-Mobile is entitled to discovery regarding the full extent of Huawei's
22 wrongdoing.

23 Huawei also claims that T-Mobile's security measures did not adequately guard the robot
24 technology's secrecy. T-Mobile's security measures included mandatory nondisclosure and
25 confidentiality obligations in several written agreements; extensive lab security, including badge
26 access, video surveillance, and dedicated security employees; and strict limits on (and
27 authorization requirements for) the vendor personnel allowed in the lab. Yet Huawei argues

1 these extensive efforts were insufficient because, for instance, T-Mobile did not plead that the
2 code on computers in its *secured lab* was protected by a password. (Mot. at 17.) But the
3 question on a 12(b)(6) motion is whether T-Mobile pleaded "reasonable" efforts at secrecy,
4 which it unquestionably has. And the fact that Huawei stole T-Mobile's trade secrets by
5 circumventing these many measures is not a defense – it is an admission of wrongdoing.

6 Separately, Huawei also seeks dismissal of the breach of contract claim. Huawei does
7 not argue that T-Mobile has failed to satisfy any elements of this claim other than "damages."
8 Huawei argues that T-Mobile's contract claim would lead to "double recovery" for damages
9 based on the trade secrets claim. This is irrelevant as a pleading matter. Whether damages
10 *awarded* pursuant to this claim are duplicative of other damages is a subject for jury instructions,
11 not a question of pleading. T-Mobile has pleaded the fact of damages caused by Huawei's
12 breach, which is sufficient to state a claim.

13 Finally, Huawei seeks dismissal of T-Mobile's claim under the Washington Consumer
14 Protection Act. Huawei's argument that T-Mobile only pleads trade secret misappropriation as a
15 basis for this claim ignores the countless unfair and deceptive acts and practices alleged in the
16 complaint. And Washington courts have consistently held that the public interest element is
17 satisfied by the defendant's repeated wrongdoing. Washington courts have also specifically
18 rejected the preemption arguments Huawei makes as premature at the pleading stage.

19 Huawei has not provided this Court with any basis to dismiss any of T-Mobile's claims.
20 The Motion to Dismiss should be denied in its entirety.

21 **II. MOTION TO DISMISS STANDARD**

22 **A. A Rule 12(b)(6) Motion Is Not A Vehicle For Contesting Facts**

23 Federal Rule of Civil Procedure 8(a)(2) provides that a pleading must contain "a short
24 and plain statement of the claim showing that the pleader is entitled to relief." The statement
25 "need only give the defendant[s] fair notice of what . . . the claim is and the grounds upon which
26 it rests." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008) (citing
27 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)).

1 A 12(b)(6) motion is not an occasion for the defendant to contest allegations. Rather, a
2 court "accept[s] as true all factual allegations in the complaint and draw[s] all reasonable
3 inferences in favor of the nonmoving party." *Retail Prop. Trust v. United Bhd. of Carpenters &*
4 *Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014); *see also Smith v. Reg'l Transit Auth.*, 756 F.3d
5 340, 347 (5th Cir. 2014) ("[D]isputed questions of fact are anathema to Rule 12(b)(6)
6 jurisprudence."). For example, "damages are a question of fact, and are not the appropriate
7 subject of a Fed. R. Civ. P. 12(b)(6) motion to dismiss." *Pierce v. NovaStar Mortgage, Inc.*, 422
8 F. Supp. 2d. 1230, 1237 (W.D. Wash. 2006).

9 **B. The Court May Consider Materials Outside The Pleadings In Only Limited**
10 **Circumstances – None Present Here**

11 On a motion to dismiss, the "scope of review . . . is limited to the contents of the
12 complaint." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *United States v. 14.02 Acres of*
13 *Land More or Less in Fresno Cnty.*, 547 F.3d 943, 955 (9th Cir. 2008) ("[A]s a general rule, a
14 district court may not consider materials not originally included in the pleadings in deciding a
15 Rule 12 motion.").

16 The Ninth Circuit has recognized two limited exceptions to this rule. *First*, a court may
17 "take judicial notice of *undisputed* matters of public record" – but may not take "judicial notice
18 of *disputed* facts stated in public records." *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th
19 Cir. 2001) (emphasis in original). *Second*, a court may consider a document referenced in the
20 complaint, but only when three conditions are met: (a) "the plaintiff's claim depends on the
21 contents of a document," (b) "the defendant attaches the document to its motion to dismiss," and
22 (c) "the parties do not dispute the authenticity of the document." *Knievel v. ESPN*, 393 F.3d
23 1068, 1076 (9th Cir. 2005). This narrow exception, in short, is limited to explicitly referenced,
24 authenticated documents on which the complaint "*necessarily relies*." *Parrino v. FHP, Inc.*, 146
25 F.3d 699, 706 (9th Cir. 1998) (emphasis added) (superseded by statute on other grounds).
26 Typical examples include the contract on which a breach claim is based, or allegedly defamatory
27 materials on which a defamation claim is based, *e.g.*, *Knievel*, 393 F.3d at 1076-77.

1 The mere fact that a complaint "references" a document or fact does not provide the
2 moving party *carte blanche* to submit those materials in an attempt to contradict well-pleaded
3 allegations in the complaint. T-Mobile also does not stipulate to the authenticity of the
4 photographs attached by Huawei.

5 **III. T-MOBILE HAS PLEADED ALL NECESSARY ELEMENTS** 6 **FOR A TRADE SECRETS CLAIM**

7 T-Mobile's trade secret claim against Huawei is based on Huawei's coordinated campaign
8 to copy elements of the current incarnation of T-Mobile's testing robot in order to build and
9 improve Huawei's own robot. (*See* Compl. ¶ 15.) The specific allegations of wrongdoing (well
10 more than the two identified in Huawei's motion), all made without the benefit of discovery,
11 provide Huawei more than sufficient notice of the trade secrets implicated by its own theft and
12 the basis of T-Mobile's claim.

13 Aside from trying to minimize its efforts to steal T-Mobile's technology, Huawei
14 primarily argues that T-Mobile's trade secrets are not truly secret and that T-Mobile did not make
15 reasonable efforts to protect those secrets. As explained below, the existence of public
16 information as to some aspects of robot testing technology does not destroy any and all trade
17 secrets relating to T-Mobile's current testing robot. T-Mobile has also made significant efforts –
18 well past the threshold of "reasonable" – to protect this technology.

19 **A. T-Mobile's Complaint Describes Huawei's Pattern Of Trade Secrets Theft In** 20 **Significant Detail**

21 **1. Huawei's campaign of theft was ongoing and extensive.**

22 Huawei's motion attempts to reduce its misconduct to two incidents of theft. This simply
23 ignores T-Mobile's complaint and the specific acts it alleges – allegations that Huawei does not
24 deny despite going through the effort to deny T-Mobile's other factual allegations in its motion to
25 dismiss. T-Mobile alleges that Huawei engaged in a *campaign* and conspiracy to copy T-
26 Mobile's technology in order to build and refine its own testing robot. (*See* Compl. ¶ 15.)
27 ("Beginning in 2012, when Huawei was first given access to T-Mobile's robot, Huawei's R&D
department and other Huawei officials and employees conspired to steal T-Mobile's trade secrets

1 so that Huawei could copy T-Mobile's robot.") The complaint identifies many instances where
2 Huawei was caught red-handed in its theft, including:

- 3 • Aggressively inquiring about non-public aspects of the robot's specifications,
4 being told by T-Mobile personnel that they were proprietary, and *continuing*
5 to try to obtain that information anyway *despite acknowledging that T-Mobile*
6 *was unwilling to share it.* (Compl. ¶¶ 43-44.)
 - 7 • Bringing an unauthorized Huawei R&D employee into the lab without T-
8 Mobile's consent after already being kicked out once, and then lying to a T-
9 Mobile contractor about having authorization from T-Mobile to be in the lab.
10 (Compl. ¶¶ 46-50.) On this occasion, the unauthorized Huawei employee also
11 photographed the robot in the lab – a direct violation of the Clean Room
12 Letter – and forwarded the photographs to his R&D colleagues at Huawei.
13 (*Id.*)
 - 14 • Stealing the robot arm (known as an "end effector") from the lab while trying
15 to hide the theft out of the view of the security camera. (Compl. ¶ 55.) The
16 same Huawei employee then immediately lied to a T-Mobile contractor who
17 asked where the part was. (*Id.* ¶ 56)
 - 18 • Taking the stolen end effector to Huawei's offices, measuring it, and
19 answering "many questions" about it (including the material on the tip and its
20 size) in a conference call with Huawei R&D in China. (Compl. ¶¶ 57-59.) A
21 Huawei employee provided at least *seven different measurements* to the R&D
22 team. (*Id.* ¶ 70.)
 - 23 • Stealing sequence files and source code by taking screenshots at the computer
24 inside T-Mobile's secured lab and sending them as attachments from personal
25 email accounts. (Compl. ¶¶ 62, 81.)
- 26
27

- Asking an Epson dealer to build the same robot T-Mobile had, because Huawei believed that the dealer had the ability to do so. (Compl. ¶ 66.) Huawei also concealed this attempt from T-Mobile.
- Secretly collecting detailed information about the "correct times, force, and duration for T-Mobile's robot – the number of times the 'finger' touches the device, the force of the pressure applied, and the duration of that pressure." (Compl. ¶ 69.)
- Recording and copying confidential specifications. (Compl. ¶ 15.)

Huawei's theft is not limited even to this wealth of examples. Certainly these specific instances alone are sufficient to state a claim. But T-Mobile has had no opportunity for discovery, and it has not used information that was provided by Huawei pursuant to an NDA or FRCP 408 before the complaint was filed.¹ In short, the specific instances pleaded are not the sum total of Huawei's wrongdoing, but part of an overall campaign. (See Compl. ¶ 15.) T-Mobile has pleaded more than enough to unlock the doors to discovery into other means Huawei used to steal T-Mobile's information, to what degree it succeeded, and how it exploited that information.

2. The existence of Huawei's robot further supports T-Mobile's claim.

Huawei built and improved its own robot using the technology it stole from T-Mobile. (Compl. ¶ 16.) Huawei only had access to this technology because of confidentiality and non-disclosure agreements between the parties. (*Id.* ¶ 12.) The Ninth Circuit has held that in these circumstances, the burden shifts to Huawei to prove that it did not use T-Mobile's trade secrets to

¹ In its motion, Huawei claims that T-Mobile submitted materials provided by Huawei pursuant to an NDA and Federal Rule of Civil Procedure 408. (Mot. at 3-4.) Huawei provides no evidence in support of this claim, and it cannot. In its complaint, T-Mobile only relied on its own investigative materials, not materials provided by Huawei pursuant to an NDA or Rule 408. Huawei's "motion to strike" (Mot. at 4, n.3), besides lacking evidence, is not a proper motion. See FRCP 12(f); LCR 7(b). Even if it were, "[m]otions to strike are disfavored and infrequently granted." *Redding v. Dhaliwal*, No. 10-998, 2011 WL 6153132, at *3 (D. Or. Oct. 4, 2011).

It is telling, however, that while simultaneously arguing that T-Mobile's pleading lacks factual support, Huawei strenuously argues that T-Mobile is not allowed to plead incriminating facts about Huawei that go directly to the claims at issue. These facts will no doubt be brought out in discovery.

1 develop its own robot:

2 Where the plaintiff shows that it possesses valuable secrets, confidentially
3 disclosed to the defendant, followed by manufacture of a closely similar device by
4 the defendant, the burden shifts to the defendant to show that, at the time, it could
5 have arrived at the process by independent invention, inspection, or reverse
6 engineering.

7 *Henry Hope X-Ray Products, Inc. v. Marron Carrel, Inc.*, 674 F.2d 1336, 1341 (9th Cir. 1982);
8 *see also Garter-Bare Co. v. Munsingwear, Inc.*, 723 F.2d 707, 715 (9th Cir. 1984) (applying
9 burden-shifting framework to reverse judgment as a matter of law). This is a burden that Huawei
10 will not be able to meet at any stage, let alone the motion to dismiss stage.²

11 **3. T-Mobile's pleading sufficiently puts Huawei on notice of the trade
12 secrets it stole.**

13 Huawei argues that T-Mobile failed to identify trade secrets with "particularity." (Mot. at
14 9.) That is not the standard. But in any case, T-Mobile has placed Huawei on notice of trade
15 secrets it stole and the nature of those secrets. As outlined below, it has identified them with
16 more than the level of specificity required.

17 **a. There is no heightened "particularity" standard for identifying
18 trade secrets.**

19 The relevant standard for pleading a trade secrets claim is notice pleading, not
20 "particularity." *See nexTUNE, Inc. v. McKinney*, No. C12-1974, 2013 WL 5211778, at *3 (W.D.
21 Wash. Sept. 17, 2013) (holding that Rule 8 notice pleading applies and denying dismissal
22 because "the Plaintiff has clearly identified the contours of its claim"); *see also Dri-Eaz*
23 *Products, Inc. v. Allen*, No. C12-1638, 2013 WL 3814361, at *2 (W.D. Wash. July 22, 2013) ("it
24 is sufficient that [Plaintiff] identified information that may be cognizable as a trade secret" – here
25 "knowledge of personal contact information for [Plaintiff's] customers"). The question, for
26 pleading purposes, is whether Huawei can understand the "contours" of the claim against it – a
27 standard exceeded by the detail in T-Mobile's complaint.

² In accounting for how it suddenly developed its own testing robot soon after receiving access to T-Mobile's lab, Huawei makes two inconsistent statements: on one hand, that the robot was independently developed by Huawei, and on the other that the robot was developed with T-Mobile's assistance for the sole purpose of testing T-Mobile devices. (Mot. at 3.)

1 *Baden Sports v. Wilson Sporting Goods Co.*, No. C11-0603, 2011 WL 3158607 (W.D.
2 Wash. July 26, 2011), Huawei's leading authority, does not apply a different standard. The
3 complaint in *Baden* did not identify *anything* that *could* be a trade secret on its face without
4 further detail (*e.g.*, "inflating a ball with a needle"), nor did it describe any innovative
5 functionality for the apparently obvious process. (*Id.* at 2.) T-Mobile's complaint, in contrast,
6 describes information that can be, and usually is, a trade secret (*e.g.*, source code). *See Brocade*
7 *Commc'ns Sys., Inc. v. A10 Networks, Inc.*, 873 F. Supp. 2d 1192, 1214 (N.D. Cal. 2012)
8 (denying summary judgment where trade secrets plaintiff identified "type of information [that] is
9 routinely given trade secret protection"). T-Mobile also identifies novel and unique functionality
10 (*e.g.*, touch functionality including force of pressure, duration, and number of touches), unlike
11 the *Baden* plaintiff. Even the particular *Baden* quote selected by Huawei demonstrates the
12 difference here: the plaintiff "fails to identify *what components of the device are claimed or*
13 *whether it is the combination of the components* that are claimed." (Mot. at 9) (citing *Baden*,
14 2011 WL 3158607, at *2) (emphasis added). Here, T-Mobile has both identified specific
15 components *and* noted that the trade secrets extend to "combinations" of the robot. (Compl.
16 ¶ 80.)

17 Huawei's other citations are also inapplicable. *telSPACE LLC v. Coast to Coast Cellular,*
18 *Inc.*, No. 2:13-CV-01477, 2014 WL 4364851 (W.D. Wash. Sept. 3, 2013) is not a pleading case.
19 Rather, it is a discovery decision about what a plaintiff must show to obtain access to a
20 *defendant's* trade secrets in discovery. Even in that limited and irrelevant context, the language
21 Huawei quotes (Mot. at 10) is from an opinion applying California's heightened discovery
22 standard, which Washington does not follow. *See* Cal. Code Civ. Proc. § 3426.5. The other case
23 cited by Huawei is likewise irrelevant. *See Robbins, Geller, Rudman & Dowd, LLP v. State*, 179
24 Wash. App. 711 (Wash. Ct. App. 2014) (deciding whether a trade secret actually existed in
25 context of Public Records Act request). These are not notice pleading cases and do not support
26 dismissal in any event.

1 **b. T-Mobile identifies specific trade secrets and the nature of**
2 **those secrets.**

3 Huawei is on notice of the "contours" of the trade secrets claimed by T-Mobile. *See*
4 *nexTUNE*, 2013 WL 5211778, at *3. T-Mobile provided far more detail in its pleading than
5 necessary to meet that bare standard.

6 Huawei quotes one paragraph from T-Mobile's complaint that identifies the nature of the
7 trade secrets at issue and declares it "wholly insufficient." (Mot. at 9.) In fact, Paragraph 80 of
8 the complaint comprehensively identifies several categories of protected information and know-
9 how related to the robot testing technology. (Compl. ¶ 80.) The trade secret categories include
10 the (1) design (*i.e.*, materials used and specifications for the robot), (2) assembly (*i.e.*, the
11 selection of components and the manner in which they are combined), and (3) operating methods
12 of the robot (*i.e.*, how the robot moves, tests, and records results, including the code used to
13 operate the robot). *Id.* This alone is sufficient to state a claim. *See Dri-Eaz Products*, No C12-
14 1638, 2013 WL 3814361, at *2 (holding that complaint sufficiently identified trade secret where
15 it listed the "type[s] of information which can be a protected trade secret") (internal quotation
16 marks omitted).

17 Yet T-Mobile's description of the trade secrets at issue does not begin and end with that
18 single paragraph. The complaint describes the trade secrets misappropriated by Huawei in
19 numerous other places, for instance:

- 20 • Compl. ¶ 13 ("its component parts, its functionality, and its software")
- 21 • Compl. ¶ 15 ("recording and copying confidential specifications . . . copying
22 operating software")
- 23 • Compl. ¶ 33 ("The robot's operating software is confidential and proprietary and
24 was also developed by T-Mobile")
- 25 • Compl. ¶ 57 ("the size of the finger and the tip and the material out of which the
26 tip is made")
- 27 • Compl. ¶ 61 (sequence files)

- Compl. ¶ 69 ("correct times, force, and duration for T-Mobile's robot – the number of times the 'finger' touches the devices, the force of the pressure applied, and the duration of that pressure")
- Compl. ¶ 70 ("size of the conductive tip and material out of which it is made, along with the size of the 'finger' – the post on which the tip resides" and specific measurements of those items)
- Compl. ¶ 71 ("size of the robot hand and its material")

In light of these allegations, Huawei cannot credibly claim it does not know what trade secrets are at issue. Its purported ignorance is also not credible given the circumstances of Huawei's theft. Huawei was given access to T-Mobile's robot under strict and explicit non-disclosure requirements. It was told by T-Mobile personnel the information was proprietary. Huawei nonetheless stole that information. It cannot now claim not to know or understand what is protected.

B. T-Mobile's Complaint Establishes The Secrecy Element Of A Trade Secrets Claim

In the face of these extensive allegations identifying T-Mobile's trade secrets, Huawei's only remaining argument is that T-Mobile did not "maintain secrecy." Huawei rests this argument on materials outside the pleadings and its own unsupported speculation – claiming that patents and patent applications as to certain aspects of the robot technology and a short promotional video of the robot disclose all of T-Mobile's trade secrets. Huawei then also claims that T-Mobile did not use adequate security measures.

First, these are fact issues that cannot be resolved at the motion to dismiss stage, even if Huawei had actual evidence to support them. *Second*, patent applications as to *some aspects* of the robot technology do not destroy all trade secrets used in building and operating the robot currently in T-Mobile's lab. *Third*, T-Mobile has alleged the reasonable steps it took to keep its secrets protected, which is all that is required at this stage. *Finally*, Huawei's extensive and repeated efforts to steal this information directly from T-Mobile is further evidence that it could

1 not obtain it publicly.

2 **1. The validity of T-Mobile's trade secrets is a question of fact not suited**
3 **to a motion to dismiss.**

4 T-Mobile pleads the fundamental elements of a trade secrets claim. Huawei seeks to
5 attack those allegations using material outside the pleadings and asserting facts without support
6 in the complaint (or anywhere else, for that matter).³ It is premature to attempt to resolve these
7 disputes at the motion to dismiss stage. *See, e.g., nexTUNE*, 2013 WL 5211778, at *4 ("[T]he
8 issue of whether Plaintiff's documents contain trade secrets is not appropriate for review on a
9 motion to dismiss"); *see also Dri-Eaz Products*, 2013 WL 3814361, at *2 (holding that the
10 Defendant's "factual assertions are irrelevant" because "it is sufficient that [Plaintiff] identified
11 information that may be cognizable as a trade secret and stated the necessary elements of a
12 UTSA claim"); *BioD, LLC v. Amnio Tech.*, No. 2:13-CV-1670, 2014 WL 268644, at *8 (D. Ariz.
13 Jan. 24, 2014) (holding that at motion to dismiss stage "any argument that some of this
14 information might be public information is premature"). Indeed, such disputes are not even
15 suitable for resolution at the summary judgment stage after extensive discovery. *See, e.g.,*
16 *Laffjord USA v. Nutreco Holding NV*, No C03-3897, 2005 WL 1126923, at *8 (W.D. Wash. May
17 10, 2005) (rejecting defendant's argument that trade secrets were too vague and were publicly
18 disclosed on packaging because "under these circumstances, the determination whether the
19 specific information asserted by plaintiff is a trade secret is a factual question for the jury").

20 On this basis alone, Huawei's motion to dismiss should be denied.

21 **2. Trade secrets exist despite other information published in patent**
22 **applications or demonstrated in the promotional video.**

23 As noted above, Huawei's improper references to these materials outside the pleadings is
24 irrelevant because fact disputes cannot be resolved at this stage. Huawei asserts – without
25

26 ³ For instance, Huawei's sweeping conclusion that Epson invented the robot is apparently based on the fact that
27 Epson's name appears on a component of the robot in a video. (Mot. at 2.) This claim is wrong, but at this stage in
the proceedings it is not necessary to present this factual dispute to the Court for resolution. It suffices that T-
Mobile pleads that it is the inventor of the robot and owner of the trade secrets. (Compl. ¶ 1.)

support – that the patent applications disclose all possible trade secrets relating to the robot in T-Mobile's lab. This is wrong as a matter of fact, pleading, and law.

a. Patent applications do not destroy the trade secrets identified in T-Mobile's complaint.

For a patent or patent application to destroy a trade secret, it must actually reflect the secret information. *See Henry Hope*, 674 F.2d at 1342 ("general depiction" disclosed in patent insufficient to destroy trade secrets related to the subject film processing equipment); *see also Nextdoor.Com, Inc. v. Abhyanker*, No. C-12-5667 EMC, 2013 WL 3802526, at *7 (N.D. Cal. July 19, 2013) ("Information related to technology disclosed in a patent or patent application may retain trade secret status, however, if it was not itself disclosed in the application."). T-Mobile's complaint draws this very distinction: "Several aspects of the robot are patented or patent-pending, and the remaining innovative aspects consist of closely-guarded trade secrets." (Compl. ¶ 10.) T-Mobile's trade secrets fall into several categories that go beyond information disclosed in the patent applications:

Unique Combinations of Public and Non-Public Materials. T-Mobile pleads that its trade secrets consist of the "combinations" of identified information reflected in its robot. It is well-established that a "trade secrets plaintiff need not prove that every element of an information compilation is unavailable elsewhere" and that a "trade secrets frequently contain elements that by themselves may be in the public domain but together qualify as trade secrets." *Boeing Co. v. Sierracin Corp.*, 108 Wash.2d 38, 50 (Wash. 1987); *see also Tewari De-Ox Sys., Inc. v. Mountain States/Rosen, L.L.C.*, 637 F.3d 604, 613 (5th Cir. 2011) ("we have specifically rejected the contention that a combination of disclosed technologies cannot itself constitute a trade secret.").

Post-Application Refinements. T-Mobile pleads that it has "improved and refined [the robot] over the last several years." (Compl. ¶ 30.) Huawei cites a Middle District of Tennessee decision for the principle that T-Mobile's patent applications foreclose its trade secrets claim. *See Hickory Specialities, Inc. v. Forest Flavors Int'l, Inc.*, 12 F. Supp. 2d 760 (M.D. Tenn. 1998).

1 But that very case *denied dismissal* of the trade secrets claim in question because there was a
2 question of fact as to whether "refinements" had been made to the underlying technology that
3 had been patented. *Id.* at 768 ("Because a question of material fact exists as to whether HSI's
4 trade secrets are refinements – or mere clarifications – of the patent, the Court must DENY
5 summary judgment on the three remaining counts.").

6 ***Particular Specifications and Choices Embodied in the Lab Robot.*** T-Mobile's
7 complaint describes at length the efforts Huawei used to track down particular specifications
8 used in T-Mobile's lab robot – the precise measurements of the end effector, the exact material
9 the tip was made out of, and the particular force, duration, and pressure used in the process.
10 These particular details are protected: "[T]he law has never required that a patentee who elects
11 to manufacture its claimed invention must disclose in its patent the dimensions, tolerances,
12 drawings, and other parameters of mass production not necessary to enable one skilled in the art
13 to practice (as distinguished from mass-produce) the invention. Nor is it an objective of the
14 patent system to supply, free of charge, production data and production drawings to competing
15 manufacturers. And that is well, for such a requirement would be irrational." *Christianson v.*
16 *Colt Indus. Operating Corp.*, 822 F.2d 1544, 1562 (Fed. Cir. 1987) (vacated for lack of
17 jurisdiction at 486 U.S. 800 (1988), and adopted in *Christianson v. Colt Ind. Operating Corp.*,
18 870 F.2d 1292 (7th Cir. 1989)); *see also* Milgrim on Trade Secrets § 1.05 ("However, not every
19 instance of seeming 'public disclosure' of a trade secret actually results in loss of trade secrecy.
20 For example, trade secrets may subsist in specifications and tolerances of marketed products
21 because such information cannot be readily ascertained through reverse engineering of the
22 product.").

23 T-Mobile nowhere claims that its patent applications include all information related to the
24 robot in its labs that Huawei has copied. Indeed, it states the opposite. (Compl. ¶¶ 10, 33.)
25 Huawei cannot support its claim that T-Mobile's trade secrets have been destroyed by patent
26 applications.
27

1 **b. The robot video is outside material that does not disclose any**
2 **trade secrets.**

3 The "robot video" is likewise outside material that is not admissible on a motion to
4 dismiss. *See Marder*, 450 F.3d at 448 ("Generally, the scope of review on a motion to dismiss
5 for failure to state a claim is limited to the contents of the complaint.") Even if it were, the video
6 on its face cannot be used to discern the type of information Huawei stole – such as the
7 *measurements* of parts of the robot. And of course, there is a difference between a video
8 produced under T-Mobile's supervision and control, and photographs surreptitiously taken in
9 close examination of particular components of technology one is trying to steal. This short
10 promotional video supervised by T-Mobile simply does not publicize the trade secrets identified
11 in T-Mobile's complaint. Regardless, any argument to the contrary is a factual dispute improper
12 to resolve at this stage.

13 **c. T-Mobile pleaded theft of source code and sequence files.**

14 T-Mobile pleaded that Huawei stole sequence files used to operate the robot for particular
15 tests, as well as source code. (Compl. ¶¶ 61-62.) Huawei calls these allegations "conclusory"
16 even though T-Mobile describes what the files are, what they do, how Huawei had access to
17 them (via the contracts the parties signed and Huawei's presence in the testing lab), and how
18 Huawei employees transmitted them. "Information and belief" does not mean "conclusory."
19 Huawei claims that the programs have been "published" (Mot. at 14), yet sequence files appear
20 nowhere in the patent applications. T-Mobile has stated a claim for theft of its trade secret files.

21 **IV. HUAWEI DOES NOT RAISE ANY SERIOUS DISPUTE TO**
22 **T-MOBILE'S BREACH OF CONTRACT CLAIM**

23 For the Supply Agreement, NDA, and Clean Room Letter, Huawei does not dispute the
24 adequacy of T-Mobile's pleading, except as to one element: "damages." Huawei's only other
25 attack on Count II concerns the inclusion in the claim of "other applicable agreements" between
26 the parties. Neither argument has merit.
27

1 **A. "Double Recovery" Is Not A Basis For Dismissing A Contract Claim**

2 Huawei argues that because there may be overlap between damages for T-Mobile's trade
3 secrets claim (Count I) and its breach of contract claim (Count II), T-Mobile has "failed to
4 adequately plead damages" for the contract claim. (Mot. at 17.) Huawei provides no authority
5 for this argument. The one case it cites, *Kammerer v. Western Gear Corp.*, 27 Wash. App. 512
6 (Wash. Ct. App. 1980), is a post-trial damages ruling, not a decision on the pleadings. This is
7 not a legal basis to dismiss a claim. *See Ferguson v. O'Connor*, No. C12-1381RAJ, 2013 WL
8 234588, at *4 (W.D. Wash. Jan. 22, 2013) ("Not only is it unnecessary to dismiss these claims
9 merely because they raise the possibility of duplicative damages, it would be improper to do
10 so."); FRCP 8(d)(2) (permitting alternative pleading)⁴

11 **B. The Complaint's Identification Of The MetroPCS Agreement Puts Huawei**
12 **On Notice Of That Contract**

13 Huawei asserts that "there is no identification [in the complaint] of the individual
14 agreements alleged to have been breached" beyond the Supply Agreement, NDA, and Clean
15 Room Letter. (Mot. at 18.) But the complaint specifically alleges that Huawei breached
16 confidentiality provisions of another contract that T-Mobile assumed as part of a 2013
17 acquisition:

18 In 2013, T-Mobile assumed MetroPCS Wireless, Inc.'s rights and obligations
19 under a Supply Agreement with Huawei (**the 'MetroPCS Agreement'**). This
20 contract also contains provisions **restricting the use and disclosure of the**
21 **parties' confidential trade secrets.**"

22 (Compl. ¶ 40) (emphasis added).

23 Count II in turn alleges that "[t]he Supply Agreement, NDA, Clean Room Letter, and
24 other applicable agreements (**such as the MetroPCS Agreement**) between the parties are valid
25 and enforceable contracts, according to which T-Mobile has performed all conditions, covenants,
26 and promises." (*Id.* ¶ 90.) (emphasis added).

27 ⁴ This argument also smacks of trade secrets "preemption" as to the breach of contract claim. But contract claims are statutorily exempt from trade secrets preemption. *See* RCW 19.108.900(2)(a) ("This chapter does not affect[] . . . [c]ontractual or other civil liability or relief that is not based upon misappropriation of a trade secret.").

1 Since T-Mobile has sufficiently identified the MetroPCS Agreement and the breached
2 terms, Huawei has "fair notice of what . . . the claim is and the grounds upon which it rests."
3 *Riverside Healthcare*, 534 F.3d at 1122.

4 Huawei's request to dismiss T-Mobile's breach of contract claim should be denied.

5 **V. T-MOBILE PLEADS A VALID CLAIM UNDER THE CONSUMER**
6 **PROTECTION ACT**

7 The Washington Consumer Protection Act is "carefully drafted . . . to bring within its
8 reaches *every* person who conducts unfair or deceptive acts or practices in *any* trade or
9 commerce." *Short v. Demopolis*, 103 Wash.2d 52, 61, 691 P.2d 163 (1984) (emphasis in
10 original). Washington courts "liberally construe the CPA to serve its beneficial purposes."
11 *Mellon v. Reg'l Tr. Servs. Corp.*, 334 P.3d 1120, 1126 (Wash. Ct. App. 2014).

12 Contrary to case authority, Huawei argues for a narrow application of this remedial law.
13 But the Washington Supreme Court has repeatedly affirmed that a claim can be brought in the
14 circumstances here – where there is a substantial likelihood that others will be harmed in the
15 same manner T-Mobile was harmed by Huawei. Huawei also argues that the claim is preempted.
16 However, (1) it is premature to adjudicate preemption now, before all of the facts have
17 developed, (2) the claim is not merely based on Huawei's theft of trade secrets, but also Huawei's
18 other unfair and deceptive acts, and (3) the CPA claim requires proof of facts independent of
19 those needed for the trade secrets claim, and T-Mobile has sufficiently plead those facts. The
20 Court should therefore deny Huawei's request to dismiss this claim.

21 **A. T-Mobile Properly Pleads The Unfair Or Deceptive Act Or Practices**
22 **Element**

23 As its sole argument that T-Mobile did not meet the basic pleading requirement of an
24 unfair or deceptive act or practice, Huawei asserts that "T-Mobile has failed to state a claim for
25 trade secret misappropriation." (Mot. at 21.) As discussed in the section above, T-Mobile has
26 met that requirement. But this claim is based on more than the theft of trade secrets. The
27 complaint alleges – and Huawei's motion ignores – a host of unfair acts and practices carried out
by Huawei employees that satisfy this element.

1 T-Mobile's CPA claim alleges that Huawei (1) stole the technology of its business
2 partner, (2) willfully violated nondisclosure requirements, (3) passed off T-Mobile's testing
3 technology as its own, and (4) attributed improvements to its devices to its own efforts rather
4 than T-Mobile's own research and development. (Compl. ¶ 108.) The claim also incorporates
5 allegations that Huawei (5) breached four contracts, (*Id.* ¶¶ 2, 13, 14, 15, 35, 36, 37, 38, 39, 40,
6 60, 89-97); (6) **concealed** its breaches and covered up its actions through lies and other
7 subterfuge in order to maintain its relationship with T-Mobile while at the same time secretly
8 exploiting the relationship for its own gain (*Id.* ¶¶ 3, 18, 49, 55, 56); (7) sought out and passed on
9 information requested by its parent company without T-Mobile's permission, (*Id.* ¶¶ 7, 50, 57,
10 58, 59); (8) abused its confidential *relationship* with T-Mobile, (*Id.* ¶¶ 2, 100, 101, 103);
11 (9) sneaked unauthorized individuals into T-Mobile's lab, (*Id.* ¶¶ 15, 46, 48, 49, 81, 101);
12 (10) stole physical items from the lab, (*Id.* ¶¶ 18, 55); and (11) attempted to re-activate
13 suspended lab access badges after being told it no longer had access (*Id.* ¶¶ 63, 64).

14 Huawei does not address any of these allegations, let alone demonstrate that *none* could,
15 as a matter of law, satisfy Washington's broad standard for what constitutes an unfair act or
16 practice. *See Mellon*, 334 P.3d at 1126 (Wash. Ct. App. 2014) ("[A] defendant's act or practice
17 might be unfair if it offends public policy as established by statutes [or] the common law, or is
18 unethical, oppressive, or unscrupulous, among other things.") (internal citations omitted); *Panag*
19 *v. Farmers Ins. Co. of Washington*, 166 Wash.2d 27, 49 (2009) ("By broadly prohibiting unfair
20 or deceptive acts or practices in the conduct of any trade or commerce, the legislature intended to
21 provide sufficient flexibility to reach unfair or deceptive conduct . . .") (internal citation
22 omitted); *Magney v. Lincoln Mut. Sav. Bank*, 34 Wash. App. 45, 57 (1983) ("In determining
23 whether something is unfair, the court may look to see . . . whether it causes substantial injury to
24 consumers (**or competitors or other businessmen.**") (quoting *FTC v. Sperry & Hutchinson Co.*,
25 405 U.S. 233, 244, n.5 (1972)) (emphasis added). Indeed, the fact that Huawei attempted to –
26 and for some time did successfully – conceal its wrongdoing and deliberate breaches from T-
27 Mobile to maintain its business relationship is alone sufficient to satisfy this element.

Furthermore, Huawei's conduct constitutes "unfair competition" under Washington law, which is separately actionable under the CPA. *See John Davis & Co. v. Miller*, 104 Wash. 444, 448 (1918) (holding that the use of confidential information acquired during one's employment in a "competitive business" results in unfair competition).

B. T-Mobile's CPA Claim Is Not Preempted, As It Relies On Facts Beyond The Trade Secrets Misappropriation Claim

Huawei also argues T-Mobile's CPA claim is preempted by the WUTSA because, again, it is "rooted exclusively in the alleged misappropriation of trade secrets." (Mot. at 23-24.) As an initial matter, Huawei does not cite a single case dismissing any claim based on preemption on a Rule 12(b)(6) motion. In *Thola v. Henschell*, on which Huawei relies, the trial court's legal error was not denying a motion to dismiss, but rather "fail[ing] to instruct the jury on preemption." 140 Wash. App. 70, 85 (2007) (emphasis added). Thus, even if Huawei later seeks an instruction on preemption of the CPA claim at trial—which would be improper for the reasons discussed below—it may not seek dismissal of the CPA claim at the pleading stage simply because the complaint separately alleges trade secret theft.⁵ *See also Fidelitad, Inc. v. Insitu, Inc.*, No. 13-CV-3128-TOR, 2014 WL 5421214, at *4 (E.D. Wash. Oct. 24, 2014) (refusing to dismiss claim as preempted at motion to dismiss stage because it "requires a factual analysis and facts are poorly developed at the pleading stage").

Moreover, as discussed above, T-Mobile's CPA claim is based on several unfair and deceptive acts that constitute other wrongs besides trade secret misappropriation. For instance, the complaint alleges not only that Huawei stole trade secrets, but also that Huawei USA abused its relationship of confidentiality with T-Mobile. (Compl. ¶¶ 2, 100, 101, 103.) It did so by, among other things, gaining security clearance for two of its employees and then letting its parent company use those employees as a vehicle for infiltrating T-Mobile's lab. (*Id.* ¶¶ 15, 46, 48, 49, 81, 101.) The Washington Supreme Court has specifically held that allegations of this

⁵ The other two Washington cases Huawei cites involved dismissals on summary judgment. *Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wash. App. 350, (1997); *Enterprises Int'l, Inc. v. Int'l Knife & Saw, Inc.*, No C12-5638, 2013 WL 6185241 (W.D. Wash. Nov. 26, 2013). The Ninth Circuit case Huawei cites, applying California law, concerned a post-trial ruling. *Atl. Inertial Sys., Inc. v. Condor Pac. Indus. of Cal., Inc.*, 545 F. App'x 600, 601 (9th Cir. 2013).

1 nature, involving the breach of a confidential relationship, "may be brought independently of
2 trade secrets claims." *Boeing*, 108 Wash. 2d at 48.

3 As another example, the complaint alleges Huawei concealed and lied about its
4 misconduct and contract breaches to prevent T-Mobile from replacing Huawei with another
5 supplier. (*Id.* ¶¶ 3, 18, 49, 55, 56.) Even if the fact finder were to ultimately determine that
6 some of these acts do not rise to the level of trade secrets misappropriation, they are nonetheless
7 independent violations that constitute unfair and deceptive practices under the CPA. Those
8 claims cannot be preempted.

9 T-Mobile's CPA claim, moreover, *requires* T-Mobile to prove facts that are irrelevant to
10 a trade secrets claim. Washington's CPA uniquely requires all private plaintiffs to make a
11 showing of public interest impact. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
12 *Co.*, 105 Wash. 2d 778, 788 (Wash. 1986) (identifying only one other state with such a
13 requirement). No such requirement exists for the trade secrets claim. In *International Paper Co.*
14 *v. Stuit*, the court rejected an argument that the WUTSA preempted a tortious interference claim
15 where one element of the tort was based on independent facts. No. C11-2139, 2012 WL
16 3527932, at *3 (W.D. Wash. Aug. 15, 2012) ("[T]here is no allegation that the fourth element of
17 the tortious interference claim is satisfied by the misappropriation of trade secrets . . . therefore
18 [the] claims are not preempted by the UTSA as it is currently pled.").⁶

19 **C. T-Mobile Has Satisfied The Public Interest Element By Pleading That**
20 **Huawei Is Likely To Repeat Its Wrongdoing With Others**

21 Whether the public interest element is satisfied is a question of fact not suited for
22 decision at the motion to dismiss stage. *See Volvo Const. Equip. N. Am., LLC v. Clyde/W., Inc.*,
23 No. C14-0534, 2014 WL 5365454, at *4 (W.D. Wash. Oct. 20, 2014) ("[W]hether the public has
24 an interest in any given action is to be determined by the trier of fact.") (citing *Stephens v. Omni*
25 *Ins. Co.*, 138 Wash. App. 151, 177 (Wash. Ct. App. 2007)). The *Volvo* court explained that

26 ⁶ Courts have previously held that a claim is not preempted by the WUTSA if it requires an element that the
27 WUTSA claim does not. *See LaFrance Corp. v. Werttemberger*, No. C07-1932, 2008 WL 5068653, at *3 (W.D.
Wash. Nov. 24, 2008).

1 "[b]ecause the public interest element is a question of fact, [the plaintiff] is entitled to an
2 opportunity to discover evidence that will support a finding in its favor." *Id.* at *5. Here, Huawei
3 asks the Court to not only deny T-Mobile that opportunity, but to ignore the well-pleaded (and
4 well-documented) allegations of Huawei's pattern of repeated conduct. These allegations
5 preclude dismissal.

6 The public interest element "hinges on the 'likelihood that additional plaintiffs have been
7 or will be injured in exactly the same fashion.'" *Kazia Digo, Inc. v. Smart Circle Int'l, LLC*, No.
8 C11-544, 2012 WL 836233, at *3 (W.D. Wash. Mar. 12, 2012) (emphasis added). This
9 likelihood-of-repetition standard is satisfied by T-Mobile's allegations of Huawei's *actual*
10 repetition of unfair and deceptive acts on others. *See, e.g., Moritz v. Daniel N. Gordon, P.C.*,
11 895 F. Supp. 2d 1097, 1114 (W.D. Wash. 2012) (denying summary judgment motion on CPA
12 claim based on evidence that defendant had "likely attempted to collect debts from other
13 persons").

14 Specifically, T-Mobile alleges that Huawei misappropriated source code from its
15 business partner Cisco (Compl. ¶¶ 77-78), and that it has generally engaged in the pattern of
16 intellectual property theft described by the U.S. House Select Committee on Intelligence (Compl.
17 ¶ 76). In the case Huawei cites, by contrast, there were "no allegations" that the unfair acts were
18 "part of 'a pattern or generalized course of conduct' creating a 'real and substantial potential for
19 repetition of defendant's conduct.'" *Nw. Prod. Design Grp., LLC v. Homax Products, Inc.*, 174
20 Wash. App. 1002, 2013 WL 992666, at *6 (2013). Here, T-Mobile *has* alleged Huawei's pattern
21 of the same wrongdoing against others. (*See* Compl. ¶¶ 73-78.)

22 Huawei's motion does not address these allegations, instead improperly attempting to
23 reduce the public interest element to a mandatory four-part test (which it is not). This is an
24 incorrect statement of the law, as the four factors⁷ listed by Huawei are merely "indicia of an

25 ⁷ Those four factors are: "(1) the alleged acts were committed in the course of the defendant's business; (2) the
26 defendant advertised to the consumer public in general; (3) the defendant actively solicited the plaintiff, indicating
27 its potential to similarly solicit others; and (4) plaintiff and defendant occupied unequal bargaining positions." *Nw. Prod.*, 174 Wash. App. at *5 (*citing Hangman Ridge*, 105 Wash. 2d at 790-91).

1 effect on public interest from which a trier of fact could reasonably find public interest impact."
2 *Hangman Ridge*, 105 Wash. 2d at 791. They are "relevant to evaluating the public interest,"
3 *Volvo Const. Equip.*, 2014 WL 5365454, at *4, but they "are not exclusive, no one factor is
4 dispositive, and it is not necessary that all be present." *Nw. Prod.*, 174 Wash. App., 2013 WL
5 992666, at *5 (emphasis added). In other words, these factors merely help inform the likelihood
6 of Huawei's repetition – a requirement T-Mobile has already met in its pleading as outlined
7 above. The "four factors" are superfluous here given T-Mobile's specific allegations.

8 Moreover, the factors have no relevance where a "legislative declaration of public interest
9 impact" satisfies the public interest element on a *per se* basis. *Hangman Ridge*, 105 Wash. 2d at
10 791. Such a legislative declaration exists here. The Washington legislature has specifically
11 declared it a "matter of public policy" to protect the confidentiality of "trade secrets, other
12 confidential research, development, or commercial information concerning products or business
13 methods." RCW 4.24.601. This case, which raises these very same public policy issues, easily
14 satisfies the public interest element of the CPA.

15 Regardless, although it does not need to do so, T-Mobile's complaint *does* address and
16 satisfy each of the four factors identified by Huawei. *See Nw. Prod.*, 174 Wash. App., 2013 WL
17 992666, at *5. *One*, the complaint alleges, and Huawei concedes, that the alleged acts were
18 committed in the course of Huawei's business. (Mot. at 20.) *Two*, the complaint alleges that
19 Huawei advertises to the general public, (Compl. ¶ 119) – a fact Huawei does not deny. *Three*,
20 Huawei's motion acknowledges the allegation that Huawei actively solicited T-Mobile's
21 business, and even concedes that Huawei successfully "participated in a competitive bidding
22 process" aimed at winning T-Mobile's business. (Mot. at 21.) Although Huawei recasts this as
23 "T-Mobile soliciting Huawei" in its motion, the pleadings state the opposite. *Four*, the parties do
24 not occupy equal bargaining positions. The Congressional investigation cited by T-Mobile
25 explains that Huawei receives the support of the Chinese government via subsidies and special
26
27

1 policies as a so-called "national champion." (Compl. ¶ 76.)⁸ Huawei's pattern of disregard of its
2 non-disclosure obligations and the intellectual property rights of others additionally puts it at an
3 unfair bargaining advantage relative to other companies that obey such obligations. (Compl.
4 ¶ 74.) In sum, T-Mobile has satisfied the pleading standard for the public interest element of its
5 CPA claim, even under Huawei's incorrect suggestion that the "indicia" are controlling.

6 Huawei's efforts to recast T-Mobile's CPA claim as a trade secret claim are belied by the
7 well-pleaded facts and the law. T-Mobile has more than met its burden for this claim to proceed.

8 VI. CONCLUSION

9 For all of the reasons discussed above, the Court should deny Huawei's motion to dismiss
10 in its entirety.

11 DATED this 17th day of November, 2014.

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26 ⁸ See, e.g., U.S. House Permanent Select Committee on Intelligence (Oct. 8, 2012)
27 (<http://intelligence.house.gov/sites/intelligence.house.gov/files/documents/Huawei-ZTE%20Investigative%20Report%20%28FINAL%29.pdf>) at 21 *et seq.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 17th day of November, 2014, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system which will send notification of
4 such filing to the following:

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